
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-CF-097
Pacifica Foundation, Inc.)	
WPFW)	NAL/Acct. No. 200332340004
Washington, DC)	
)	FRN: 0007 2593 10

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 26, 2003

By the District Director, Columbia Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Pacifica Foundation, Inc. ("Pacifica"), licensee of FM broadcast station WPFW, Washington, DC, has apparently violated Sections 11.61(a)(1)(i), 11.61(a)(2)(i)(A) and 73.1870(c)(3) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly and weekly tests of the Emergency Alert System ("EAS") and by failing to verify the log in writing by the chief operator. We conclude that Pacifica is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On February 14, 2003, an agent from the Columbia Field Office inspected broadcast station WPFW, in Washington, DC. There was no station manager, chief operator or engineer present or available for the inspection. A representative of Pacifica accompanied the agent during the inspection. The agent reviewed the station logs from December 1, 2002 through January 31, 2003. He noted that no EAS weekly or monthly tests had been transmitted during the two month period. He was provided a continuous EAS equipment tape printout showing three weekly and one monthly tests received in the month of December 2002. Specifically, the agent noted that weekly tests were received on December 2, 9, and 16, 2002; and a monthly test was received on December 27, 2002. Additionally, there was no designation of the chief operator in writing with a copy of the designation posted.

III. DISCUSSION

¹ 47 C.F.R. §§ 11.61(a)(1)(i), 11.61(a)(2)(i)(A) and 73.1870(c)(3).

Federal Communications Commission

3. Section 11.61(a)(1)(i) of the Rules requires FM stations to conduct monthly tests of the EAS header codes, Attention Signal, Test Script and EOM code that conforms to procedures in the EAS Operating Handbook and Section 11.61(a)(1)(v).² Pacifica's station records showed that no required EAS monthly tests were conducted in December 2002 and January 2003.

4. Section 11.61(a)(2)(i)(A) of the Rules requires FM stations to conduct weekly tests of the EAS header and EOM codes at least once a week at random days and times. Pacifica's station records showed that no required weekly tests were conducted from December 2002 to January 2003.

5. Section 73.1870(c)(3) of the Rules requires the chief operator to date and sign the log in writing, verifying that the station is operating as required by the Rules. A review of station records from December 2002 to January 2003 showed that the chief operator, or his designee, had not reviewed, dated and signed the logs as required. Section 73.1870(b)(3) of the Rules requires that a chief operator be designated in writing, and a copy posted with the station license.³ A copy of the designation could not be found.

6. Based on the evidence before us, we find that Pacifica willfully⁴ and repeatedly⁵ violated Sections 11.61(a)(1)(i), 11.61(a)(2)(i)(A), and 73.1870(c)(3) of the Rules by failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of December 2002 and January 2003, by failing to conduct required weekly tests of the EAS header and EOM codes from December 2002 to January 2003, and by failing to maintain the required records by verifying that the station has been operating as required, by the chief operator in writing.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*"),⁶ sets the base forfeiture amount for failure to make required measurements or conduct required monitoring at \$2,000, and for failure to maintain the required records at \$1,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to

² 47 C.F.R. § 11.61(a)(1)(v).

³ 47 C.F.R. § 73.1870(b)(3).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

Federal Communications Commission

pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁸ (“Act”) and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Pacifica is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Sections 11.61(a)(1)(i), 11.61(a)(2)(i)(A), and 73.1870(b)(3) of the Commission’s Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Pacifica SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332340004 and FRN: 0007259310.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332340004.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, and 0.311.

¹⁰ See 47 C.F.R. § 1.1914.

Federal Communications Commission

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Pacifica Foundation, Inc., 1929 Martin L. King Jr. Way, Berkley, CA 94704.

FEDERAL COMMUNICATIONS COMMISSION

Charles C. Magin
District Director
Columbia Office

Attachment A – FCC List of Small Entities, October 2002